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MICHAEL RODAK, J

IN THE

Supreme Court of the United States

October Term, 1973

No. 73-1059

HAMILTON MANUFACTURING COMPANY,
Petitioner,

v.

METAL BUILDINGS INSULATION, INC.
Respondent.

REPLY BRIEF OF PETITIONER

HAROLD E. WINTHER of
COMBS & SMALL
Of Counsel

923 South K Street
P.O. Box 5126
Tacoma, Washington 98405
Telephone: (206) 383-5861

ROBERT P. PIPER
2600 Seattle-First National
Bank Building
Seattle, Washington 98154
Counsel for Petitioner

CRAFTSMAN & MET PRESS SEATTLE, WASHINGTON

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REPLY OF PETITIONER TO ARGUMENT PROFFERED ON BEHALF OF RESPONDENT OPPOSING PETITION FOR WRIT OF CERTIORARI

I. The Only Question Subject to Review by Writ of Certiorari Has Been Finally Adjudicated by the Highest Court of the State of Washington, Thus Invoking the Supreme Court's Jurisdictional Power to Entertain the Merits of Such Petition

Respecting the dispute between Hamilton Manufacturing Company [hereinafter referred to as "Petitioner"] and Metal Buildings Insulation, Inc., [hereinafter referred to as "Respondent"], the only matter of any constitutional significance, namely jurisdiction, was put to rest by the Supreme Court of the State of Washington on October 9, 1973.

See Petition, Appendix C. Indemnity and the detail of Respondent's products liability claim is of no instant moment. Though the several quotations proffered, all couched in rather broad and general language, doubtless would be relevant under proper circumstances, Respondent's preoccupation with non-jurisdictional issues not only is premature but wholly without this Court's concern, whatever the timing. The United States Supreme Court may, on appeal from a state court judgment, consider whether such court had jurisdiction even where the assumption thereof has not been challenged. *Seaboard Airline Railroad Co. v. Daniel*, 333 U.S. 118 (1948). And in *Local No. 438 Construction & General Laborers' Union, AFL-CIO v. Curry*, 371 U.S. 542 (1963), a determination by the state's highest court respecting a lower court's competence to issue a temporary injunction was held to be "final" within the meaning of 28 U.S.C. §1257. The Court held, at 550:

> "The policy of 28 U.S.C §1257 against fragmenting and prolonging litigation and against piecemeal reviews of state court judgments does not prohibit our holding the decision of the Georgia Supreme Court to be a final judgment, particularly when postponing review would seriously erode the national labor policy requiring the subject matter of respondents' cause to be heard by the National Labor Relations Board, not by the state courts."

The injection of three rather inconsequential affirmative defenses and the more substantive aspect of the controversy suggests merely of Respondent's inability to separate the wheat from the chaff. Jurisdiction, the sole matter of federal review, is no longer susceptible to the scrutiny of the Washington court. In principle, the instant petition falls squarely within the pronouncement of *Betts v. Brady*, 316 U.S. 455, 461 (1942):

> "Since Judge Bond's order was a final disposition by the highest court of Maryland in which a judgment could be had *of the issue joined on the instant petition* we have jurisdiction to review it." (Emphasis added.)

Similarly, in *Cumberland Coal Co. v. Board of Revision of Tax Assessments*, 284 U.S. 23, 24 (1931), the Court observed:

> "The specific contention that the plan of assessment violated the equal protection clause of the 14th Amendment was presented by petition for reargument and was considered and was explicitly overruled by the Supreme Court. As the state court entertained and decided the Federal question, this Court has jurisdiction."

Respondent's desire for finality rather ignores the limits of the petition, the essence of which is the very competence of the Washington courts to hear and decide the basic dispute between the parties. Notwithstanding the seeming dichotomy, the relevant aspect of the case is indeed ripe for review.

II. Within the Constitutional Framework, the Assumption of *in Personam* Jurisdiction Over Petitioner by the Courts of the State of Washington Would Offend "Traditional Notions of Fair Play and Substantial Justice"

Albeit unwittingly, Respondent discerns from the record a rather curious view of Petitioner's position. Nowhere does it appear that Petitioner, in 1966, when the allegedly defective product was sold, shipped items of its manufacture into fifteen different states with knowledge that the same, in an untampered condition, would eventually wind up in each of the United States. In fact, all dealings between Petitioner and Respondent occurred within the borders of

Ohio and Virginia. The "stream of interstate commerce" and "vast market" bespoken exemplify Respondent's 1966 engagement, not Petitioner's.

The mass of authority cited, without exception, simply does not extend to the instant circumstances either because at least minimal contact between the non-resident and forum state was founded or the non-resident was domiciled without the United States. Notwithstanding the lower courts' concerted effort to avoid "imposing frozen ideas of due process," the suggested guidelines of Supreme Court origin are illusory. The carefully screened excerpts from *International Shoe Co. v. Washington*, 326 U.S. 310 (1945), and *Hanson v. Denckla*, 357 U.S. 235 (1958), epitomize the broad and general. Actually or inferentially, Petitioner has had no contacts, ties, or relations with the state of Washington. Invocation of jurisdiction, within the due process criteria of *International Shoe Co. v. Washington, supra*, thus becomes immediately suspect:

> "*That clause [due process] does not contemplate that a state may make binding a judgment* in personam *against an individual or corporate defendant with which the state has no contacts, ties, or relations.*" (Emphasis added.) 326 U.S. at 319

Interestingly, the introductory passage from *Hanson v. Denckla, supra*, appearing in Respondent's Brief (at 17), culminates with the following:

> "*The unilateral activity of those who claim some relationship with a non-resident defendant cannot satisfy the requirement of contact with the forum state . . . [I]t is essential in each case that there be some act by which the defendant purposely avails itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws. . . .*" (Emphasis added.) 357 U.S. at 253.

CONCLUSION

Allowance of the Washington courts to assume *in personam* jurisdiction over Petitioner would, under the circumstances, not only offend "traditional notions of fair play and substantial justice," but would virtually obliterate whatever significance imparts from the underlying term — "jurisdiction".

Respectfully submitted,

ROBERT P. PIPER
Counsel for Petitioner

HAROLD E. WINTHER of
COMBS & SMALL
Of Counsel